

### **REMARKS/ARGUMENTS**

Claims 1, 4-13, and 15-25 are pending in the present application. Claims 1, 8, and 15 are amended herein. Claims 4, 11, and 12 are amended to correct minor informalities. Claims 21-25 have been added. Claims 2, 3, and 14 have been cancelled. No new matter has been added.

Support for the claim amendments and the new claims can be found, for example, in FIGS. 1-4 and paragraphs [0021] and [0025] of pre-grant publication no. US 2007/0031960. For example, the specification recites that it may be “desirable to conduct testing with greater or lesser amounts of fluid, and the well 20 and the sample fill nose 16 may be sized to enable optimum fluid transport to the well”. *See* ¶[0021]. Furthermore, the specification recites that “in addition to increasing capillary force in the capillary gap of the sample testing region 34, the vent 22 may provide an area for sample overflow”. *See* ¶[0025]. FIGS. 1-3 also illustrate examples of (i) a vent cross-section different from a sample fill nose cross-section, and (ii) a sample fill nose notch having a first width and a vent notch having a second width different than the first width. FIG. 4 illustrates an example of a platform extending in a direction substantially perpendicular to an inner surface.

### **Anticipation Rejection of Claims 1-5, 8, 10, 15, and 17 by Huhn**

In the September 16, 2008 non-final Office action, claims 1-5, 8, 10, 15, and 17, were rejected under 35 U.S.C. § 102(b) as being anticipated by Huhn US 2002/0145121 (“Huhn”). The present rejection is respectfully traversed.

Huhn discloses a capillary microchannel formed between a basic body 2 and a lid 3 so that the basic body 2 and the lid 3 define limitation walls for the microchannel 4. Paragraph [0035]. Huhn further discloses that the microchannel 4 extends in two lateral portions 4', 4" substantially in parallel with the outer surfaces of the basic body 2 and the lid 3. Paragraph [0036]. Huhn then describes that the basic body 2 is of a substantially planar design with its upper surface having worked therein the microchannel 4 and an indentation having surfaces 2', 2", 2"". Paragraph [0038]. The lid 3 of Huhn is described as substantially planar, but has surfaces 3', 3", 3''' on a prism-shaped elevation. However, unlike the claimed invention, it is

noteworthy that Huhn describes the cross-section of microchannel 4 as substantially constant. See paragraph [0036].

#### Independent Claim 1

Amended independent claim 1 recites a format for optical testing of a sample comprising, *inter alia*, a sample fill nose having a sample fill nose cross-section and a vent having a vent cross-section different from the sample fill nose cross-section.

Huhn discloses a microchannel 4 that extends in two lateral portions 4', 4" substantially in parallel with the outer surfaces of the basic body 2 and the lid 3. Paragraph [0036]. Huhn further discloses that the cross-section of microchannel 4 as substantially constant. In contrast, amended claim 1 recites a vent cross-section different from a sample fill nose cross-section. That is, Huhn not only **lacks** disclosure of different cross-sectional geometries for the sample fill nose and vent, it **teaches away** from such a feature. Thus, applying the teachings of Huhn, a person skilled in the art would understand that a channel cross-section has to remain substantially constant.

For at least these reasons, Huhn does not and cannot disclose or suggest amended claim 1, and thus, the rejection of claim 1 should be withdrawn and the claim should be allowable.

#### Independent Claim 8

Amended independent claim 8 recites a format for optical testing of a sample comprising, *inter alia*, a sample fill nose having a sample fill nose cross-section and a vent having a vent cross-section different from the sample fill nose cross-section.

As discussed for amended claim 1, Huhn discloses a microchannel 4 that extends in two lateral portions 4', 4" substantially in parallel with the outer surfaces of the basic body 2 and the lid 3. Paragraph [0036]. Huhn further discloses that the cross-section of microchannel 4 as substantially constant. However, in contrast to amended claim 8, Huhn does not recite a vent cross-section different from a sample fill nose cross-section. That is, Huhn **lacks** disclosure of different cross-sectional geometries for the sample fill nose and vent, and further, **teaches away**

from such a feature. Thus, applying the teachings of Huhn, a person skilled in the art would understand that a channel cross-section has to remain substantially constant.

For at least these reasons, Huhn does not and cannot disclose or suggest amended claim 8, and thus, the rejection of claim 8 should be withdrawn and the claim should be allowable.

#### Independent Claim 15

Amended independent claim 15 recites a method of manufacturing a format for optical testing, the method comprising, *inter alia*, the acts of: (i) a sample fill nose notch having a first width, the sample fill nose notch terminating at the well, and (ii) a vent notch having a second width different than the first width, the vent notch terminating at the well.

As discussed for amended claims 1 and 8, Huhn discloses a microchannel 4 that extends in two lateral portions 4', 4" substantially in parallel with the outer surfaces of the basic body 2 and the lid 3. Paragraph [0036]. Huhn further discloses that the cross-section of microchannel 4 as substantially constant. However, in contrast to amended claim 8, Huhn does not recite a sample fill nose notch having a first width and a vent notch having a second width different than the first width. That is, Huhn **lacks** disclosure of a sample file nose notch and a vent notch having different widths. In fact, Huhn **teaches away** from such a feature. Thus, applying the teachings of Huhn, a person skilled in the art would understand a channel cross-section remaining substantially constant, not a cross-section that is different.

For at least these reasons, Huhn does not and cannot disclose or suggest amended claim 15, and thus, the rejection of claim 15 should be withdrawn and the claim should be allowed.

#### Dependent Claim 2-5 and 17

Claims 2 and 3 have been cancelled, thus rendering the rejection of those claims moot. Claims 4, 5, and 17, which depend from claims 1 or 15, are neither anticipated by nor rendered obvious over Huhn for at least the reasons discussed above in connection with amended claims 1 or 15. Thus, the rejection of claims 4, 5, and 17 should be withdrawn and the claims should be allowable.

**Obviousness Rejection of Claims 6, 7, 9, 11-14,  
16, and 18-20 Based on Huhn and Lilja**

In the September 16, 2008 non-final Office action, claims 6, 7, 9, 11-14, 16, and 18-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Huhn. Claims 6 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Huhn in view of Lilja US 4,088,448 ("Lilja").

Claim 14 has been cancelled, thus rendering the rejection of that claim moot. Claims 6, 7, 9, 11-13, 16, and 18-20, which depend either directly or indirectly from claims 1, 10, or 15, are not rendered obvious over Huhn, Lilja, or any combination thereof, for at least the reasons discussed above in connection with amended claims 1, 10, or 15. Thus, the rejection of claims 6, 7, 9, 11-13, 16, and 18-20 should be withdrawn and the claims should be allowable.

**New Claims 21-25**

New independent claim 21 recites, *inter alia*, a platform extending in a direction substantially perpendicular to an inner surface. Huhn does not disclose or suggest such a feature. In fact, Huhn **teaches away** from claim 21 through its recitation that surfaces 3<sup>I</sup> and 3<sup>III</sup> are inclined approximately at an angle of 45 degrees towards the lid plane and approximately at an angle of 90 degrees towards each other. *See* Drawing; paragraph [0037]. For at least these reasons, claim 21 should be allowable.

New claims 22-25 depend either directly or indirectly from claims 1, 10, or 15. For at least the reasons discussed above in connection with amended claims 1, 10, and 15, claims 22-25 should be allowable.

**CONCLUSION**

The Applicant submits that claims 1, 4-13, and 15-25 are in condition for allowance and action toward that is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (312) 425-8552.

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It is believed that no additional fees are due except for one additional independent claim and one additional dependent claim; however, should any additional fees be required (except for payment of the issue fee) or credits for overpayment be due, the Commissioner is authorized to deduct the fees from or credit the overpayments to the Nixon Peabody Deposit Account No. 50-4181, Order No. 247082-000093USPX.

Respectfully submitted,

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/Peter J. Prommer, Reg. No. 54743/

Peter J. Prommer  
NIXON PEABODY LLP  
161 North Clark Street, 48th Floor  
Chicago, IL 60601-3213  
(312) 425-3900 - main  
(312) 425-3900 - facsimile

ATTORNEY FOR APPLICANT